

Before the  
Federal Communications Commission  
Washington, D.C. 20554

**CS Docket No. 94-99**

In the Matter of

Amendment of Section 76.51  
of the Rules to include  
Sanger, California in the  
Fresno-Visalia-Hanford-Clovis, California  
Television Market

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: September 2, 1994; Released: September 19, 1994**

**Comment Date: November 10, 1994**

**Reply Comment Date: November 25, 1994**

By the Chief, Cable Services Bureau:

1. Before the Commission is a petition for rule making filed by Sanger Telecasters, Inc., licensee of television station KMSG-TV, Channel 59, Sanger, California, affiliate of the Telemundo Spanish Network, to amend Section 76.51 of the Commission's Rules, 47 C.F.R. §76.51, to add the community of Sanger to the Fresno-Visalia-Hanford-Clovis, California television market.<sup>1</sup>

**BACKGROUND**

2. Section 76.51 of the Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine territorial exclusivity rights under Section 73.658(m) and helps define the scope of compulsory copyright license liability for cable operators.<sup>2</sup> Some of the markets consist of more than one named community (a "hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities.<sup>3</sup> Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support.<sup>4</sup>

3. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."<sup>5</sup>

4. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992,<sup>6</sup> which amended Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. §614, requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in Section 76.51 of the Commission's Rules. The Commission stated that where sufficient evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole, such cases will be considered under an expedited rulemaking procedure consisting of the issuance of a Notice of Proposed Rule Making based on the submitted petition.<sup>7</sup>

**THE PETITION**

5. According to the petitioner, Sanger is located between Fresno (the dominant community in the market) and Visalia; is some 12 miles from Fresno and only a few miles northeast of a line between the center of Fresno and the center of Visalia. Sanger is approximately 28 miles from Visalia, 27 miles from Hanford and 12 miles from Clovis. KMSG-TV attaches maps of its city grade, Grade A and Grade B contours and of the Grade B signal coverage contours of the other stations in the market. These show that its Sanger is located inside the Fresno-Visalia-Hanford-Clovis Arbitron Area of Dominant influence ("ADI") and is within the Grade A contours of all 7 commercial television stations licensed to the designated communities in the Fresno-Visalia-Hanford-Clovis market. KMSG-TV provides city grade coverage to both Fresno and Clovis and Grade B coverage to both Visalia and Hanford.

6. Although KMSG-TV is entitled to carriage on area cable systems by virtue of its inclusion in the Fresno-Visalia (Hanford) ADI,<sup>8</sup> because Sanger is not a designated community in the Section 76.51 market listings, KMSG-TV is considered a "distant signal" for purposes of compulsory copyright license liability if carried on certain cable sys-

<sup>1</sup> See *Report and Order* in MM Docket 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd 2965, 2977-78, n.150 (1993).

<sup>2</sup> See 47 C.F.R. §76.658(m) and 17 U.S.C. §111(f).

<sup>3</sup> See *CATV-Non Network Agreements*, 46 FCC 2d 892, 898 (1974).

<sup>4</sup> See *Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).

<sup>5</sup> See, e.g., *TV 14, Inc. (Rome, Ga.)*, 7 FCC Rcd 8591, 8592 (1992), citing *Major Television Markets (Fresno-Visalia, California)*, 57 RR 2d 1122, 1124 (1985). See, also, *Press Broadcasting Company, Inc.*, 8 FCC Rcd 94, 95 (1993).

<sup>6</sup> Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>7</sup> The Commission has delegated authority to the staff to act on petitions for rule making seeking market redesignation and has stated that it expects "that requests for specific hyphenated market changes that appear worthy of consideration will be routinely docketed and issued as rulemaking proposals." See *Report and Order* in MM Docket 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd at 2977-78, n.50 (1993).

<sup>8</sup> See Section 76.56(b) of the Commission's Rules.

tems in the ADL.<sup>9</sup> Petitioner states that the expanded television market designation is necessary for station KMSG-TV to be carried on certain cable systems in the market as a "local" signal (i.e. without the cable systems thereby incurring significant copyright royalty fees for carriage of the station).<sup>10</sup>

### DISCUSSION

8. Based on the facts presented, we believe that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rule making process, including the comments of interested parties. It appears from the information before us that the television stations licensed to Fresno, Visalia, Hanford, Clovis, and Sanger do compete throughout most of the proposed combined market area, and that sufficient evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, the petitioners' proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market. Accordingly, comment is requested on the proposed addition of Sanger to the Fresno-Visalia-Hanford-Clovis, California television market.

### ADMINISTRATIVE MATTERS

#### Ex Parte Rules -- Non-Restricted Proceeding

10. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206(a).

#### Comment Information

11. Pursuant to applicable procedures set forth in §§1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **November 10, 1994**, and reply comments on or before **November 25, 1994**. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in

the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

#### Initial Regulatory Flexibility Analysis

12. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601 (3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this *Notice of Proposed Rule Making*, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

#### Additional Information

13. This action is taken by the Chief, Cable Television Bureau pursuant to authority delegated by Section 0.321 of the Commission's rules. For additional information on this proceeding, contact William H. Johnson (202) 416-0856.

### FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Acting Chief, Cable Services Bureau

<sup>9</sup> Under Section 76.55(c)(2) of the Rules, a local commercial television station otherwise entitled to mandatory carriage need not be carried on market-area cable systems if the station is considered a "distant signal" under the copyright compulsory license (17 U.S.C. §111) and the station does not agree to indemnify the cable operator for the increased copyright liability. See *Report and Order* in MM Docket 92-259, *supra*, at 2973-74.

<sup>10</sup> Stations licensed to communities specifically designated in Section 76.51 are considered local for all cable systems within the 35-mile zones of all listed communities in a given hyphenated market. The absence of Sanger as a designated community in this market list may result in KMSG-TV's classification as a

"distant signal" for market-area cable systems more than 35 miles from Sanger. By amending Section 76.51 of the Rules to include the community of Sanger in the market as proposed, market-area cable systems will presumably be able to carry its signal on an equal basis with other stations in the market without incurring distant signal liability. See also *Cable Compulsory License; Major Television Market List*, Copyright Office, Library of Congress, 59 Fed. Reg. 41512 (August 12, 1994) (indicating that Copyright Office would generally accept FCC changes in market designations for purposes of administering the cable television compulsory copyright licensing provisions of Section 111 of the Copyright Act.)